



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 7466448

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physician and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
  - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

As acknowledged in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a first-year medical resident at [redacted] University School of Medicine. The record indicates that his duties involved patient care, research, and teaching and supervising students. He proposes to complete his medical training and pursue a position as a cardiology faculty member, continuing his research and clinical work specializing in mechanical circulatory support. For the reasons discussed below, we find that the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research in the area of mechanical circulatory support. Specifically, he intends to extend his current research to assess and mitigate complications resulting from [redacted] device insertion, and to study the use of [redacted] [redacted] to provide circulatory and respiratory support. He also stated in his response to the Director's request for evidence (RFE) that his intention is to be employed in a position "with a strong focus on research" and "not exclusively involved in daily management of individual patients."

In his decision, the Director determined that the Petitioner's proposed endeavor has substantial merit. Based upon the evidence in the record concerning the number of deaths related to cardiovascular disease and the economic burden of the associated medical treatment, we agree that the Petitioner's work in the treatment of patients and his research in the area of mechanical circulation support has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. As evidence that the benefit of his proposed work has broader implications in the field of medicine, and more specifically cardiology, he submitted reference letters describing how his research on mechanical assistance devices will have an effect on both patient outcomes and in developing guidance for their implementation. In addition, the Petitioner has submitted documentation of his research and its publication which indicates that the benefit of his proposed research has broader implications, as the results are disseminated to other experts in his field through medical journals and conferences. Because the Petitioner has demonstrated both the substantial merit and national importance of his proposed research in cardiology, we find that the record supports the Director's determination that he meets the first prong of the *Dhanasar* framework.<sup>4</sup>

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<sup>3</sup> The Petitioner submitted copies of his Doctor of Medicine and Master of Science diplomas, both earned at [redacted] University in 2018.

<sup>4</sup> The Petitioner acknowledges that at least a portion of his proposed endeavor will involve the care and treatment of patients and educational duties. While these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the cardiology field and healthcare industry more broadly, as opposed to being limited to

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submitted documentation of his academic credentials, articles published in medical journals, and evidence that others in his field have recognized and built upon his work. In addition, as noted above, he submitted several reference letters describing his research work and its impact on the field.

In his decision, the Director found that because the Petitioner indicated on Forms I-140 and ETA-9089 that his proposed employment is as a cardiologist, and because he acknowledged in his statements submitted initially and in response to the Director's RFE that his proposed endeavor includes both cardiology research and clinical patient care, the fact that he did not possess a medical license at the time of filing renders him insufficiently positioned to advance his proposed endeavor. On appeal, the Petitioner emphasizes his desire to continue to conduct research in his field, which does not require a medical license. Because we have already determined that to the extent that his proposed endeavor does involve teaching or patient care, these activities do not have a broader impact and so are not of national importance, we need not determine whether the Petitioner has established that he is well positioned to advance those activities. Our analysis under this prong will focus solely on whether he is well positioned to advance his proposed cardiology research.<sup>5</sup>

Several expert references identify specific examples of how the Petitioner's work has already impacted the field of medicine.<sup>6</sup> [redacted] professor at [redacted] University College of Physicians and Surgeons, states that he has collaborated extensively with the Petitioner. He focuses on a particular research project of the Petitioner's in which he investigated the [redacted] effect of heart valve procedures during [redacted] implantation, noting that the results indicate that concurrent valve repair reduces complications. The record includes a review of the resulting article was posted on the MCS Journal Watch page of the website of the International Society for Heart and Lung Transplantation, which [redacted] states "shows appreciation from fellow leaders in cardiology." In addition, the webpage indicates that one or two of the "best articles from peer reviewed journals" are selected each month to be reviewed.

Another reference letter was written by [redacted] chief of congenital cardiac surgery at [redacted] Children's Hospital. He writes about the Petitioner's research on [redacted] and its role in managing acute cardiogenic shock, which he indicates "demonstrates the effectiveness of [redacted] over various traditional methods." [redacted] notes that "a position statement from the European Society of Cardiology by their Heart Failure Association utilized [the Petitioner's] research in the establishment

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the patients he serves and his medical trainees. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical work as a cardiologist and activities as a medical instructor do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>5</sup> We note that the Petitioner's current supervisor submitted a letter stating that for the term of his residency, "he will continue to dedicate a substantial portion of his time" to research endeavors. In addition, the Petitioner's statement in response to the Director's RFE makes clear that he will seek positions "with a strong focus on research."

<sup>6</sup> All of the reference letters have been thoroughly reviewed, including those not specifically mentioned in this decision.

of new clinical guidelines.” The record includes a copy of the statement in which this organization described new diagnostic and treatment options for heart failure patients.

In addition, [ ] of [ ] University Medical Center corroborates the Petitioner’s contribution to an article he co-authored which was published in *The Journal of Heart and Lung Transplantation*. [ ] describes this research on the effect of [ ] assist devices, and notes that it has been cited a total of 37 times,<sup>7</sup> “testifying to its worth in the scientific community.” He also indicates that despite not being the first author on this paper, the Petitioner’s contributions were “equal to my own,” and that the Petitioner “was just as influential as I was in terms of the overall effort made and the final outcome.”

The Petitioner’s education and expertise in his field, record of success in publishing his research focusing on [ ] circulatory support devices, documented impact upon other researchers as well as practicing cardiologists, and detailed plan for his proposed endeavor which is supported by documentary evidence position him well to advance his proposed endeavor. Accordingly, the record demonstrates establishes that the Petitioner satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver because as a medical resident, which is an inherently temporary position, a labor certification would be impractical. Specifically, he refers to the decision of the United States Department of Labor Board of Alien Labor Certifications (BALCA) in *Matters of Albert Einstein Medical Center and Abington Memorial Hospital* (BALCA, November 21, 2011). Although the Petitioner does not explain why it would be impractical to obtain a labor certification from an employer once he has completed his residency, we find that, given the Petitioner’s multiple advanced degrees and track record of success as a researcher, the United States would benefit from his contributions, regardless of the availability of qualified domestic workers.

## III. CONCLUSION

The Petitioner has established his eligibility as a professional holding an advanced degree, and has met the three prongs of the *Dhanasar* analytical framework. We therefore find that he has established eligibility for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.

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<sup>7</sup> We note that the Petitioner’s Google Scholar profile page, [https://scholar.google.com/citations?user=\[ \]](https://scholar.google.com/citations?user=[ ]), indicates that as of May 4, 2020, this paper has been cited on 59 occasions.